(Testimony of Sture Oscarsson.)

Q. On the occasion of this voyage were the eggs that were in the box you have described supposed to last 2700 men for that voyage? A. Yes, sir.

Q. Weren't there other eggs on that vessel for the Army? A. Then we had dried eggs.

Q. What? A. We had dried eggs in cans.

Q. Did they have any eggs for the soldiers?

A. They used those eggs, too.

Q. Pardon me?

A. They used those eggs. The soldiers didn't get eggs every morning.

Q. The soldiers didn't get eggs, is that right?

A. Every morning.

Q. Do you know of your own knowledge whether there was on board that vessel eggs there in some of these other boxes for the soldiers?

A. No, sir, not more than in that box.

Q. What?

A. Not more than in that same box.

Q. Do you know the contents of all the boxes?

A. Yes, sir.

Q. Did you look in them all?

A. Yes, sir.

Q. And only in one box did you find any eggs?

A. That same one.

Q. And that is the box you described?

A. Yes.

Q. Who has access to that box? What departments of the vessel?

A. The steward's department—the stewards have their key, and then we have a storekeeper, who has

(Testimony of Sture Oscarsson.)

the key for it. The reefer engineer also has a key for it. [1373]

Q. There is a reefer in there all the time?

A. No, he has a key for emergency. Of course, he checks the boxes about every hour and marks that down, I think, on a blackboard, but he don't have to go in them without there is anything wrong in them. He takes the temperature of them about ~~every hour~~ or every two hours.

Q. Mr. Oscarsson, when you get up in the morning where do you go?

A. I went to my baking.

Q. How long do you remain in that bake shop?

A. I used to be around eight or nine o'clock, until I eat breakfast.

Q. Eight or nine o'clock? A. Yes.

Q. From then on how long do you remain in your bakery shop?

A. I don't remember how I had my shift arranged there. It is so long ago.

Q. How long is your day's work?

A. Eight hours.

Q. In those eight hours, how many hours do you spend in your baker shop?

A. Oh, about seven and a half.

Q. During the seven and a half hours you do not know what that reefer is doing, at all, do you?

A. What the reefer is doing? No.

Q. In other words, when you say the reefer checks the temperature of the icebox you merely mean that he is supposed to do that, is that right?

(Testimony of Sture Oscarsson.)

A. That is marked down on his sheet.

Q. Yes, he is supposed to check the temperature, isn't that right? But you do not watch him check it, do you?

A. No. I [1374] do not watch him check it.

Q. You do not know how many times the steward goes into that icebox during the seven and a half hours you are spending in the bakery shop, do you? A. No, sir.

Q. The only person who has access to that icebox that you know of your own knowledge are yourself—isn't that correct? A. That is correct.

Q. You do not go with the steward, you do not go with the reefer, you do not go with anyone except with Mr. Oscarsson, is that correct?

A. When I go into that box I have to see the storekeeper.

Q. You have to see the storekeeper? Does he let you in?

A. When I want something like, say, I want a couple of dozen oranges, or something like that, then—whatever we have in there—then we go in and get it, and I go in with him.

Q. On a normal voyage, Mr. Oscarsson, how many cases of eggs would your bakery shop use where you were cooking for 350 men?

A. Well, I should say for a normal voyage of a month I should say 45 cases.

Q. How many?

A. 45. That would be a case and a half a day with full capacity.

(Testimony of Sture Oscarsson.)

About a case and a half a day? A. Yes.

Q. How long was voyage 13 on this ship?

A. Well, we come in—we come in and we paid off the 25th of March, I think.

Q. Now, you signed on on the 11th of December?

A. Yes. [1375]

Q. So that this particular voyage was January, February, March—that would be 90 days—about 105 days, is that correct? A. Yes.

Q. And at a case and a half a day you would use about 152½ cases of eggs, isn't that correct?

A. Yes.

Q. And on this voyage you only used 85, didn't you? Yes or no.

A. I used some powdered eggs, see?

Q. I am asking you, on this voyage you used 85 cases of eggs, didn't you?

A. It should be 85.

Q. On this voyage you used about 85 cases of eggs, isn't that correct?

A. It should be correct, yes.

Q. That is what you told Mr. Pratt, isn't that correct? A. That should be right.

The Court: Is there any hope of getting through with this witness, or shall I excuse the jury?

Mr. Faulkner: I think, your Honor, I may be fifteen minutes with him.

The Court: The jurors may be excused until ten o'clock tomorrow morning.

(An adjournment was taken until tomorrow, Friday, February 8, 1946, at ten o'clock a.m.)

Friday, February 8, 1946, 10:00 o'clock a.m.

The Clerk: United States v. Nye & Nissen.

(The jury was not present.)

Mr. Sullivan: Mr. Faulkner is in the library, if your Honor please. I will go and get him.

The Court: Very well.

The Court: What is the situation you are to present this morning?

Mr. Faulkner: I thought, your Honor, before the jury came in, I would like to present to your Honor an argument on the admissibility of the testimony of the two men who have just left the witness stand. Last night, after the adjournment of the court, I felt that I was completely right on my objection. I made an investigation of many hours and I would like to present the results of it to your Honor. I am convinced the evidence, under the authorities, is not admissible.

The Court: What evidence have you in mind now, the evidence of the condition of the eggs on that voyage of the Hawaiian Shipper?

Mr. Faulkner: It is not admissible because the question involved is condition of eggs at the time of delivery. An effort is being made to show the condition of eggs at the time of delivery by virtue of evidence at a subsequent time. [1377] The rule is the presumption is not retroactive. In other words, when they show that eggs on the second or fourth day of a voyage were not in good condition, there might be a presumption that thereafter prospectively that the eggs might be deemed bad, but

when they say four or five days after the voyage has commenced that because of the condition of eggs on the 18th or 19th of December, 1944, that that evidence is evidence which will show the condition of the eggs on December 5, 1944, you are giving a retroactive effect to a presumption. In other words, the condition that is attempted to be proved by this evidence is the condition of the eggs on the 5th of December.

Under the regulations that are in evidence eggs which have been inspected within 21 days of the delivery date are properly tendered to the Government. On December 5th they received eggs. What was the condition at that time? No evidence has been collected to show the condition of the eggs on December 5th. They wish to show the condition of those eggs on December 5th, the date of delivery to Matson Navigation Company, by virtue of what was determined to be the condition of them on the 18th or 19th of December. I have the authorities here that a retroactive effect of a presumption is not a matter of weight of evidence at all.

The Court: Proceed.

Mr. Faulkner: May I present it?

The Court: Yes. [1378]

Mr. Faulkner: These points I am urging to the court now will be the basis of a motion to strike the testimony of Mr. Oscarsson in its entirety and the testimony of Mr. Debes, the chief steward of the Hawaiian Shipper, in all respect relating to the condition of eggs on the Hawaiian Shipper in the month of December.

Corpus Juris Secondum lays the rule down in this fashion, your Honor: General proof of the existence at a particular itme of a fact or status of a continuous nature, of a continuing nature, gives rise to a presumption that it continued unchanged until the contrary is shown. Your Honor will observe that that is a presumption in the future. This presumption is not retroactive, but circumstances may be such as to warrant an inference that an established fact must have existence for a definite period in the past. Also the rule is limited in its application to such facts and conditions as to be a continuing nature.

In the case of Brooks vs. United States, 146 Fed. page 223——

Mr. Pratt: May I ask again for the case?

Mr. Faulkner: Yes. Brooks vs. United States, 146 Fed., page 223, at page 229—it is a mail fraud case. The Circuit Court of the Eighth Circuit states:

"We cannot adopt the rule invoked by counsel for the Government, that from the existence at one time of a [1379] certain condition of things the same state or condition of things is presumed to continue until the contrary is shown. That rule is limited in its application to the continuance of such conditions as are of a continuing nature. It is only things of that continuing nature that are presumed to continue. Wharton's Law of Evidence, Volume 2."

The Court: What were they dealing with there?

Mr. Faulkner: The Brooks case?

The Court: Yes; a mail fraud case?

Mr. Faulkner: A mail fraud case. This man at one time was mailing letters for this company. They established he was the man who mailed letters at one time, and the Government claimed that if it was shown that he was mailing them at one time it would be presumed that he continued to be the mailing clerk, or whatever it was, and the court would not accept it.

The Court: That would surely be a violent presumption because a man mailed a letter on a day certain that he continued.

Mr. Faulkner: That is true. However, you will find much more authority in some of the cases for a presumption of that nature, that is, that a man is apt to follow a general business practice and will be presumed to follow it until shown to the contrary. There is more reason to have applied it there, because he could show the contrary. In other words, if it was [1380] established that on the 15th of April I am the mailing clerk of a corporation and they established that I was in the habit of mailing all the documents of that company, and I am still in its employ, it will be presumed I followed the same practice. That is more in accord with the presumption that these cases would uphold than a situation concerning perishable products.

In the Corbin vs. U. S. case—this is the rule we are relying on here primarily, because that eliminates some of the things I will point out to your Honor. This is the Corbin case, 181 Fed. 296, at page 304. This, again, is a Circuit Court decision.

In this case—I don't claim my statement of the case will be entirely accurate, your Honor, but there was a situation relating to the adulteration of whiskey. At the time of the seizure of the whiskey the whiskey was adulterated. At the time of its manufacture it was pure. The question arose whether the party who had the liquor adulterated it at a previous time. This is what the court says:

"Independent of this, however, we do not understand the rule of presumptive evidence to be that if and when the existence of a given condition is proven there is a presumption that it had eixsted previous to that time. Inhabitants of Hingham v. Inhabitants of South Scituate, 7 Gray (Mass.) 232; Dixon v. Dixon." It cites a number of cases.

"In Inhabitants of Hingham v. Inhabitants of South Scituate, supra, Bigelow, J., speaking for the court, [1381] said, 'The law presumes that a fact, continuous in its nature and character, like domicil, possession or seisin, when once established by proof, continues; and, in the absence of evidence to the contrary, legally infers therefrom its subsequent existence. But we know of no rule of law which permits us to reason in an inverse order, and to draw from proof of the existence of present facts any inference or presumption that the same facts existed many years previously.'

"Dixon vs. Dixon, supra, is a case wherein the husband made a settlement by deed upon his wife," —well, that is not necessary right there.

"In the case at bar, there is no evidence as to when the substitution was made prior to the time

when the whiskey in question was seized and analyzed, and under the authorities cited the jury would not be permitted to presume that the substitution had existed prior to the date of the reception of the whiskey by claimants."

Then in the case of Mandelbaum v. Goodyear Tire & Rubber Company, 6 Fed. (2d) page 824, this is a case, your Honor, involving the financial condition of the company. The court said—this case is a little afield, your Honor, but the same principle was involved:

"Furthermore, the court held that, in view of the great financial depression conceded to have taken place in [1382] the fall of 1920 and thereafter, a statement of the condition of the company at that time, conditions being materially changed, could furnish no safe guide from which the jury could determine the condition of the company in the spring and early summer of the same year. We think the court was right in so holding."

In the case of Liverpool and London and Globe Insurance Company vs. Nebraska Warehouse Company, 96 Fed. Rep. (2d series) page 30, this is likewise a circuit court decision, the court said:

"It is a general rule that a prior or subsequent existence is evidential of a later or earlier one."

Then citing cases.

"But 'the limits of time within which the inference of continuance possesses sufficient probative force to be relevant vary with each case. Always strongest in the beginning, the inference steadily diminishes in force with lapse of time, at a rate

proportionate to the quality of permanence belonging to the fact in question, until it ceases or perhaps, is supplanted by a directly opposite inference."

Indeed, it is often said that while a given condition, shown to exist at a given time, may be presumed to have continued, there is not, on the other hand, any presumption that it existed previous to the time shown." [1383]

The court cited with approval the Corbin case, which I read to your Honor.

In the case of Gray v. Baltimore Railroad, 24 Fed. (2d) 671, at page 674, states:

"For the purpose of establishing the negligence of the engineer, we do not think that it can be presumed that one could or could not see a light as far as 10:47 as at 9:30."

That is at 10:47 p.m. and at 9:30 p.m.—a presumption that because you could see a light at 10:47 at night that you could see it from the same distance at 9:30.

In the general treatment on this subject, your Honor, in A.L.R.—this is on the presumption in the future:

"Mr. Wigmore in his work on Evidence, aptly points out that the degree of probability that a condition shown to exist has continued or persisted at a later period, 'depends on the chances of intervening circumstances having occurred to bring the existence to an end. The possibility of such circumstances will depend almost entirely on the nature of the specific thing whose existence is in issue and

the particular circumstances affecting it in the case in hand. That a soap bubble was in existence half an hour ago affords no inference at all that it is in existence now; that Mt. Everest was in existence ten years ago is strong evidence that [1384] it exists yet."

Mr. Pratt: What are you reading from?

Mr. Faulkner: A.L.R., Volume 80, page 446.

Before referring to the general outline of the conclusions I reached, there are other rules of law applicable to this case. There is the law of sales. Under the law of sales and the relations of the United States which they claim with Matson Navigation, and which we claim the relation was to be vendor and vendee, in the sales of perishable merchandise there is no warranty of quality involved in the sale of perishable merchandise. There is no warranty of quality of merchandise. Under the law of sales, where there is a full opportunity of inspection and quality is open to inspection, the court will find in analyzing the cases on the law of sales I think substantially this: That if there is a fraud in connection with the inspection which they have offered in evidence, it then might say that that evidence would be admissible because very naturally what a general rule of law may be, if you have circumvented circumstances by fraud the rule of law does not apply. So that evidence relating to the method of inspection of eggs which your Honor has admitted and would be relevant to the transaction where the vendee would not be presumed to have accepted title to the property be-

cause he had been imposed upon, but under the general rule where you sell merchandise of a perishable nature there is no warranty of [1385] quality that goes with it. When you sell goods that are sold with delivery and inspection, as here, there is no warranty of quality.

Now, the general rule on the question of this presumption, I gather from these cases that there are certain types of cases which would be of a continuing nature, certain types of facts, which will be presumed to exist in the future, and at times will be presumed to have existed in the past. The predicate for the indulging of that presumption, it is not a matter of weight of evidence or the sufficiency, or anything like that; the matter is again whether the article involved is one of a continuing nature. In one of these books there is a case where the claim was made that a condition of snow, hail, sleet and rain existed on a certain day in relation to a negligent condition of a building. The court said that is not evidence of a type which will permit any inference that that condition continued thereafter.

In addition to those cases and that rule, which has a prospective application, the rule in the Corbin case, the Rule in the 96 Fed. (2d) case, are definitely and positively to the effect it does not have an application in retrospect or refroactively.

In this case we have the testimony—I will read it to your Honor, there is just one line:

"Q. There isn't any question that an egg is a perishable [1386] product, is there, Colonel?

A. Very, very much so, yes.

Q. Very much so? A. Correct."

The Court: I did not follow that.

Mr. Faulkner: "Q. There isn't any question that an egg is a perishable product, is there, Colonel? A. Very, very much so, yes.

Q. Very much so? A. Correct.

Q. There isn't any question that particular conditions have very speedy effect on eggs, isn't that right, in connection with their quality?

A. Yes."

The court would have to hold, as a matter of law, that eggs and their quality are a continuing condition. In order to permit this evidence to go in prospectively, the court will have to hold as a matter of law that a presumption of the existence of the quality of a perishable product such as an egg on the 18th or 19th of December, and if at any time subsequent to the date of delivery, that a jury may infer from those facts that at the time of delivery the eggs were in the condition that is described at a subsequent time, which is right in the teeth of the rulings of three circuit [illegible]t decisions.

I felt I owed a duty to your Honor to present that to you. I worked diligently on it.

I would like the views I have now expressed to be before [1387] the court when I refer to the motion to strike that evidence, which I think should be in the presence of the jury.

Mr. Pratt: If the Court please, I have listened very attentively to what Mr. Faulkner has said. I have also listened to his reading of these authori-

ties, and they are all beside the point as far as the evidence is concerned, the testimony of these witnesses, of the evidence that came of the delivery of these products, these eggs, of the evidence of the invoice that was submitted by the company for these eggs as being, as I recall it, AA eggs, which are eggs of the highest quality, there is a complete continuity as far as time is concerned from the time of the delivery of the eggs to the period of time testified by these witnesses.

Here are eggs invoiced as AA eggs from——

Mr. Faulkner: I beg your pardon. You don't state it right. They are not the highest quality eggs.

Mr. Pratt: What are they?

Mr. Faulkner: Procurement No. 1.

Mr. Pratt: Procurement No. 1. That is the same as A. These eggs are sold for the purpose of remaining edible for a period of several months, they are invoiced by the defendants as eggs of high quality, A, which, of course, are eggs to be used during the course of a protracted voyage.

With reference to the continuity of time between the time of the delivery of the eggs and the episodes to which [1388] these witnesses testify, furthermore, it must be proven that aside from the question of the condition of these eggs, which obviously were so rotten that they could not have been A eggs at the time they were delivered, besides that your Honor will recall that both of these witnesses, at the time that they were on the stand, testified there were missing eggs. That does not involve a ques-

tion of condition; it is a condition of absolute fraud in the amount of eggs delivered. As far as these cases are concerned, I don't think any of them is applicable. For instance, the first case that he cited was a mail fraud case, and it was a case of the employment of some officer or employee of a corporation. I assume that it is held that because he was an employee at one time there is no proper inference that he was an employee at an earlier time. That certainly is not relevant to this question.

Then the question in the next case, the Corbin case, as I gather from what Mr. Faulkner said, the question of adulteration of whiskey, the question whether adulteration at one time would have any relation to a condition many years previously. Of course, there can be no inference unless there is a continuity, and we have in this case a complete continuity of time and of condition. Here it is only a few days between the time of the delivery of the eggs and the time these witnesses testified to. [1389]

And under all these cases—one in 6 Federal 2nd speaks of the financial condition of a corporation, and the Court holds that because there was a financial depression, the condition of the company at a later date is not a safe guide as to the condition at some previous time. Obviously that would be true. And there are questions in all these cases, as I listened to Mr. Faulkner, of a considerable lapse of time, and here there is no lapse of time. There is a complete continuity, and surely it is a question for the Jury to determine whether in the light of the testimony of these witnesses there has been a fraud

committed by these defendants in invoicing for something that was not in fact delivered. Consider the extreme nature of this testimony, the fact that eggs within a day or two were rotten, smelled to high heaven, and were as black at your hat, I think one of these witnesses said, and had a lot of blood spots in them; and the worst quality of eggs were packed at the bottom of the case, toward the bottom of the case; that there were many missing eggs. Those are all circumstances that are so near to the actual date of delivery that there is a continuity which doubtless is necessary in order that a presumption may be raised, in order that the evidence may be admissible to illuminate the whole situation in the eyes of the Jury.

I have not had any opportunity to go further into this thing, but, as I say, these various cases that are cited by [1390] Counsel do not seem to me to have any relevancy to this situation, where we have a continuity of time.

Mr. Faulkner: The difficulty with Mr. Pratt's reply is this. He says the facts in these cases are not analogous. That is true. We have not an egg case. But when the courts were holding in the manner I have indicated, they were laying down a principle of law. In other words, in the Liverpool case, the warehouse case, they laid down a principle of law with numerous cases cited to support it. They merely happened to apply in that particular case the principle of law that was laid down in 96 Federal 2nd, which is this:

"Indeed it is often said that while a given con-

dition, is shown to exist at a given time, may be presumed to have continued, there is not, on the other hand, any presumption that it existed previous to the time shown."

The foundation comes from the Government, whether it is false or not. Colonel Hand said eggs will change overnight. They will go from good eggs to rotten eggs overnight. Eggs are very, very perishable. The matter of counting cases is something different. I am not making a point of that. It is the quality of the merchandise. Your Honor can see this: If what Colonel Hand said is true, people eat with their eyes and they eat with their mouths and all of their senses are involved, and it is not pleasant to have the determination made of whether any fraud was committed on these inspectors by the [1391] description of bad eggs. Under the regulations twenty per cent of an "A" egg or a Procurement 1 egg, twenty per cent of the quantity in that case may be bad eggs, not particularly inedible, but these were not inedible either, because they would have to be the highest grade. Procurement 1 is not the highest grade egg. It is next to the lowest grade egg. It may be bought for human consumption, and they are trying to prove the condition on December 5, the condition of eggs that had been inspected on the floor of Nye and Nissen. Presumptively they had been delivered to a pier. Presumptively they had remained on a pier, and then they had been in an icebox, and then they were taken from an icebox and put in a hot galley. Now, Colonel Hand in his testimony outlined to the

Court that if an egg has not been produced on a chicken ranch where they had sound conditions and any germinating substance had adhered to the shell, the egg will decompose rapidly under certain contions.

Mr. Pratt: Under what conditions?

Mr. Faulkner: Overnight. The sunlight on a pier was one of the illustrations that are in this record.

Mr. Pratt: Extreme heat.

Mr. Faulkner: I did not interrupt you at all, Mr. Pratt. In other words, we have the testimony in this case that the eggs were four hours on a pier with the sun on them. We have the condition of the drafts of air through cases of eggs and [1392] the effect on them. They will change rapidly. And therefore I say that when you permit—may I have the defendants' exhibits, your Honor? On the 14th of December I think there is supposed to be—this is not in evidence, your Honor, but we asked the Government for the certificates of inspection that apply to this ship. On the 14th of December there is a certificate of inspection by the Department of Agriculture for these eggs. On the 18th of December—and, of course, your Honor knows that these men may be off a day or two either way—but the sailing date would be around the 18th, which is two weeks after the eggs were inspected, and then four days later at sea there are some eggs that are as described. They are using that evidence to prove that on that day of delivery on that waterfront the eggs did not reach the quality of the in-

voice. That is not evidence of quality on that day at all unless there is a presumption of law that will make it so.

The Court: You have a record, have you not? You have interposed an objection to this testimony and the record so discloses.

Mr. Faulkner: Yes, your Honor.

The Court: I am prepared to allow the record to stand.

Mr. Faulkner: Very well.

The Court: Call the Jury back.

Mr. Faulkner: Then may I incorporate my objection to the testimony and motion to strike on the grounds that have been [1393] indicated in the discussion before the Court prior to the Jury coming in this morning?

The Court: Very well. Call the Jury.

Mr. Faulkner: I understand they will have more evidence like this, and I do not want to repeat the objection. May I, when they refer to this incident, have that objection to the testimony without specifying it in greater detail?

The Court: Very well.

(Thereupon the Jury returned to the court room.) [1393-a]

The Court: Waive the roll call; stipulated all the jurors are seated in the box. You may proceed, gentlemen.

Mr. Faulkner: If your Honor please, yesterday I made certain objections to the admissibility of the testimony of the witnesses Debes and the gentleman on the stand now. I at this time move to strike

out all the testimony upon all the grounds indicated at the oral argument in court in the absence of the Jury.

The Court: The motion will be denied.

Mr. Faulkner: Exception. And it is agreeable to Counsel for the Government that the objections made in that argument may be deemed to go to other similar testimony with reference to that objection?

Mr. Pratt: That is right.

Mr. Faulkner: Without specifying them fully.

Mr. Pratt: That is all right.

STURE OSCARSSON,

recalled;

Cross-Examination (resumed)

Mr. Faulkner: Q. Mr. Oscarsson, who have you talked about this case to before you came into court? A. What?

Q. Who have you talked your testimony over with before you came into court yesterday?

A. I didn't talk to nobody.

Q. Did you talk to Colonel Hand?

A. No.

Q. Didn't you leave the witness stand last night and go right [1394] out and talk to Colonel Hand?

A. After I left here?

Q. Yes, right out in the corridor.

A. Out there?

(Testimony of Sture Oscarsson.)

Q. Yes. A. Yes, sir.

Q. Didn't you do that?

A. No, I didn't—who, this fellow?

Mr. Faulkner: Will you stand, Colonel?

Q. Didn't you leave the witness stand yesterday and go right out and talk to the Colonel?

A. No, he talked to me.

Q. All right, he talked to you. You have talked to this man here, Mr. Johnson?

A. Yes, I think it was him.

Q. You talked to him? A. Yes.

Q. When?

A. When we left here, after I left.

Q. Before you came on the witness stand who was the first person who talked to you about coming into court to be a witness?

Mr. Pratt: If you remember.

The Court: Q. Do you understand the question?

A. No.

Q. Before you came here into court at all——

Mr. Faulkner: Your Honor, I think Mr. Pratt wants to do the testifying.

Mr. Pratt: I will be glad to say I talked to him, if you want that.

The Court: The question is who was the first one, if anyone, that you talked to about this case, about your coming into Court, to testify. [1395]

The Witness: Yesterday?

The Court: Anytime.

The Witness: Well, they called me up about three weeks ago.

(Testimony of Stare Oscarsson.)

The Court: Who called you?

The Witness: On the telephone, and I was supposed to see Mr.—this gentleman over here—I forget his name. He was the first one I spoke to.

Mr. Faulkner: Q. Mr. Magee?

A. Mr. Magee, yes.

Q. Three weeks ago?

A. I guess it was—no, he called the hotel I live in before I came in, and when I came in, to call up Mr. Magee, and I came in about the fifth or sixth of last month.

Q. Is that the first occasion that anyone talked to you about eggs on the voyage of the Hawaiian Shipper in December of 1944?

A. Well, when I was there then, when they inspected eggs, when they came in; after that, during the other time nobody ever said anything to me about it.

Q. Will you describe, Mr. Oscarsson, the condition of the eggs that you saw Mr. Debes open on the occasion that he came into your galley and opened some eggs? Will you describe those eggs?

A. Yes. When he came in and opened the eggs——

The Court: When was this? Fix the time.

Mr. Faulkner: There was only one occasion, your Honor.

The Court: When was that? [1396]

Mr. Faulkner: On the voyage of the Hawaiian Shipper. It was in December.

(Testimony of Sture Oscarsson.)

The Court: I have in mind that we have a Jury to follow the testimony.

Mr. Faulkner: Q. There was only one occasion, Mr. Oscarsson, when Mr. Debes came in and opened a case in your presence? A. Yes.

Q. Will you describe the eggs that he opened?

A. They was better than those that I had used. He had a layer of pretty good eggs. Well, he say, "You have to try to use them for baking anyway." He said, "You can always doctor them up."

Q. I am not asking you how they compared with the eggs that you opened. I am asking you to describe the eggs after they were opened. What did they look like?

A. They were watery. I don't think he had any eggs that were bloody.

Q. Please describe the eggs. Is that all that was wrong with them, that they were watery?

A. They were watery and they had a funny odor.

Q. They had a funny odor? A. Yes.

Q. Tell me the different type of vegetables that were in that ice box to the best of your recollection?

A. Well, I could tell you. On one end we had cabbage right close to the cooler box.

Q. Cauliflower?

A. Cabbage, right next to the box; there is a bulkhead or wall in between the two boxes. There [1397] is one box on this side—like this is the wall here, and inside here was a box—that was much colder—and right alongside there in this box was the cabbage. There was a pasageway, oh, I should

(Testimony of Sture Oscarsson.)

say about a yard wide, and then there was the eggs stacked there.

Q. Then the eggs? A. Yes.

Q. The eggs were near the cabbage?

A. No, there was over a yard between them, a passageway to walk in.

Q. That is what I mean, but the eggs were a yard away from the cabbage? A. Yes.

Q. What other vegetables were there?

A. And then we had tomatoes, lettuce, I think apples, some oranges there, and grapefruit.

Q. Grapefruit? A. Mostly grapefruit.

Q. Did you have any onions? A. No.

Q. No onions on shipboard?

A. Yes, there was some onions on board.

Q. Potatoes?

A. The potatoes we have mostly up on deck.

Q. And did you have any in the ice box?

A. No. We had no room for them.

Q. You had a lot of potatoes, is that right?

A. Yes, but we had no room for potatoes in the ice box.

Q. Do you think you have exhausted all the vegetables and fruits that were in the ice box, that is, in this cold storage unit? [1398]

The Court: That word "exhausted" he is probably having some difficulty with.

Mr. Faulkner: Q. In other words, you have said cabbage, oranges and grapefruit. Did I understand you to say there were also some onions?

(Testimony of Sture Oscarsson.)

A. No, I didn't say that. We never used to put onions in.

Q. You don't put onions in?

A. No. A cauliflower—maybe cauliflower or maybe a couple of cases of leeks or something like that, maybe green onions or something like that.

Q. You did not observe from hour to hour the temperature of that ice box, did you?

A. No, not from hour to hour.

Q. Nor did you personally see anyone else go down and observe the temperature of that ice box from hour to hour, did you?

A. I see the reefer every time I met him outside. He went around and observed the temperature.

Q. But you only met him twice a day?

A. Not from hour to hour, no, but every time I spoke to him he was always around there.

Mr. Oscarsson, do you know when these eggs came on board?

A. No, not exactly. I don't know if they came night or day or what time.

Q. Did you have anything to do with the putting of the eggs on board or storing them in the ice box?

A. No, sir.

Q. Do you know what day they came on board?

A. No, I can't recall. [1399]

Q. You did not examine the cases themselves, did you? A. When they came aboard?

Q. No, at any time. The egg cases?

A. Well, this one I get I examined them, but not all of them.

(Testimony of Sture Oscarsson.)

Q. The galley, when you brought the eggs into your galley, where would you put them in reference to the galley itself?

A. I had a separate space for them by the table.

Q. How far away from the galley, or does the galley mean the whole thing?

A. No, there was a baker. He has only one oven, and the cold box there by the sink.

Mr. Faulkner: May I have that answer read?

(Answer read.)

Mr. Hippeli: "Bakery."

(Answer re-read.)

Mr. Pratt: I think he said "bakery."

The Witness: The bakery has one oven. There is three on top, those electric oven, and then alongside of that there is a cooler box where you put in bread and cool it.

Q. Did you put those eggs down on the floor by the sink? A. By the sink, yes.

Q. How far is the sink from the ovens?

A. Well, the bakery end is much bigger than this stand here, and the ovens were like from this and then a long sink like from here over to that part, and then I had the eggs alongside—we had a mixer here, and then there was a little space there. I keep the eggs between [1400] the mixer and——

Q. How big is the oven? Three ovens?

A. Yes, three ovens, the same size, on top of each other.

Q. How large would they be, Mr. Oscarsson?

(Testimony of Sture Oscarsson.)

A. Well, let me see. I got twelve three pounds—they are about this wide and about this long to the far end. The ovens ain't bigger than this place here standing on top of each other.

Q. We want to get that. Take the distance from one——

A. Right from here and this way. That is about the size of the space of the ovens.

Q. In other words, you have drawn a point a little bit larger than the level on which you are sitting as far as the width is concerned, is that right? A. Width and length, too.

Q. About from the brass rail on the jury box over to the edge of the chair next to his Honor?

A. Yes.

Q. That would be the width?

A. The width and length, too.

Q. And the length? Do you mean the depth?

A. Yes, the depth of it.

Q. And then the height would be about how high? A. My height.

Q. Your height?

A. Yes, about my height.

Q. One oven like that?

A. No, the three ovens, one on top of each other.

Q. So each oven would be from the bottom of this to the top of that—would that be about the depth of each oven? A. Yes, about that.

Q. And there would be three of them?

A. Yes.

(Testimony of Sture Oscarsson.)

Q. When would you light those ovens, Mr. Oscarsson? A. I put them on in the morning.

Q. What time?

A. Oh, about six o'clock.

Q. About six o'clock, and how long did they go?

A. I had them on all day at low speed, so long as I was working.

Q. Are they the only cooking apparatus in the galley in which you work?

A. In the bakery, yes.

Q. The three large ovens? A. Yes.

Q. Did I understand that they were all electric?

A. All electric.

Q. Where are the bread baker's ovens?

A. That was the same ovens in that ship.

Q. He used the same ovens you did?

A. Yes.

Q. And where is your bakery galley with respect to the galley where the cooking is done?

A. There was a passageway in between them.

Q. How far would it be in distance, Mr. Oscarsson?

A. Well, you walk out from the bakery, there was a passageway, and then you have to go into the galley. There was only six or seven feet.

Q. Was there a bulkhead between the two?

A. About two bulkheads.

Q. In other words, the passageway was between the two bulkheads? A. Yes. [1402]

Q. How large was your entire galley, that is, the

(Testimony of Sture Oscarsson.)

room itself, apart from the size of the oven or the sink? How large was the galley?

A. Well, like up to the end of the box and then square like this.

Q. About to the end of the Jury box?

A. Yes, and square like this.

Q. And then about——

A. From where you are standing.

Q. Where I am standing right at the edge of this table directly back to the wall? A. Yes.

Q. And that was the room in which the eggs were contained, is that right?

A. I only kept a case there each day.

Q. That is what I mean, but that is the room in which you opened the eggs, isn't it? A. Yes.

Q. When would you go down and get those eggs, the night before or in the morning?

A. No, we would always do it in between eight and nine.

Q. Between eight and nine in the morning?

A. Yes.

Q. When would you start breaking them?

A. What?

Q. When would you start breaking them?

A. Well, I broke them right after they came up.

Q. Pardon me?

A. I broke some when they came up.

Q. Would you be breaking them all day?

A. Well, I broke only as I used them. Sometimes I had to use three dozen, four dozen and then

(Testimony of Sture Oscarsson.)

a couple of hours later I would have to use some more. [1403]

Q. Until the case was gone? A. Yes.

Q. When you used a case and a half a day, Mr. Oscarsson, that would, of course, leave a half a case of eggs left over, wouldn't it? A. Yes.

Q. What would you do with those eggs?

A. Those eggs had to stay there until the next morning. I would use them next.

Q. You would leave them right there?

A. Yes.

Mr. Faulkner: That is all.

Mr. Pratt: That is all. [1404]

THOMAS ANDREW DOLYN,

called by the Government; sworn.

Direct Examination

Mr. Pratt: Q. Will you state your name?

A. Thomas Andrew Dolyn.

Q. Thomas Andrew——

A. Dolyn, D-o-l-y-n.

Q. D-o-l-y-n? A. Right.

Q. Where is your home Mr. Dolyn?

A. My home is Felton, California.

Q. What is your occupation?

A. I am a hotel chef.

Q. You are a hotel chef. What is the name of the hotel?

A. Dickinson Hotel, Ben Lomond.

(Testimony of Thomas Andrew Dolyn.)

Q. Where were you born, Mr. Dolyn?

A. I was born in Austria.

Q. Where?

The Court: Austria.

Mr. Pratt: Q. Have you worked as a cook on vessels sailing out of this port?

A. Yes; I was working for the Matson people for fifteen years.

Q. For the Matson Company for fifteen years. Do you recall having been employed on the steamship Hawaiian Shipper? A. Yes.

Q. For how long a period were you on that ship?

A. From September, 1944, to March 25, 1945.

Q. I think you have your discharge certificates, have you? A. Yes.

Q. The first of these discharge certificates shows you were chief [1405] cook on the Hawaiian Shipper from the date of shipping, September 18, 1944, to November 28, 1944. Was that Voyage 12, do you know? A. Yes.

Q. The other one shows date of shipping December 11, 1944 and date of discharge March 25, 1945.

A. That's right.

Q. Was that the 13th voyage?

A. Yes, sir.

Q. Of the Hawaiian Shipper?

A. Yes, sir.

Q. During the period between the end of the 12th voyage and the beginning of the 13th voyage where were you?

A. We was in port at the time.

(Testimony of Thomas Andrew Dolyn.)

Q. You were in port? A. Yes.

Q. Were you on the boat? A. Yes.

Q. These are certificates of discharge issued by the Department of Commerce, Bureau of Marine Inspection and Navigation? A. Yes.

Q. Is that right? A. That is right.

Q. What was your position on the boat during these voyages?

A. Well, I was in charge of galleys as chief cook.

Q. You were chief cook? A. Yes, sir.

Q. As chief cook on that boat, how many employees did you have, how many subordinates?

A. Underneath me, six.

Q. Six under you?

A. Yes, underneath me.

Q. You had a large galley, did you?

A. Well, not so large. It was pretty small.

Q. It was pretty small? A. Yes. [1406]

Q. How big was it?

A. I couldn't describe it for you.

Q. Couldn't you describe it?

A. No. You see, the ship was converted from a freighter so they built it as small as they could.

Q. What?

Mr. Faulkner: Your Honor, if you ask him to speak up I think it would be better.

The Court: Read the answer.

(The record was read by the reporter.)

Mr. Pratt: Q. How many people did you have

(Testimony of Thomas Andrew Dolyn.)

to cook for, you and your subordinates, your helpers?

A. The crew for the ship, and we had officers, the Army officers, sometimes was 500, sometimes 300 only, sometimes less.

Q. That is, the officers of the troops, the troop officers?

A. Troop officers. I couldn't give you exactly, never was much interested in that.

Q. You provided food, did you, for the officers of the troops? A. Yes.

Q. Then also for the crew of the ship?

A. That's right.

Q. And also for the naval gun crew?

A. That's right.

Q. How many was that, altogether, do you remember?

A. I couldn't tell you exactly, no, because I was so busy, I was not interested in the number of the men.

Q. It kept you pretty busy, did it, Mr. Dolyn?

A. Yes, I was pretty busy. [1407]

Q. In providing food for these people that you speak of, what food did you provide?

A. Three meals a day.

Mr. Faulkner: We object to that as incompetent, irrelevant, and immaterial.

Mr. Pratt: Three meals a day?

A. Three meals a day. That is the ship's crew. The officers used to get only two meals.

(Testimony of Thomas Andrew Dolyn.)

Mr. Faulkner: Just a moment. Your Honor, whether they had fillet mignons——

The Court: Well, we may get around to the eggs.

Mr. Faulkner: Well, if he asks about that——

Mr. Pratt: Q. I am getting to the eggs, I am getting right to the eggs.

Q. In the course of your cooking for these people, you used eggs, did you?

A. Yes, for breakfast sometimes and—whatever the requirement, what the meal requires; mostly breakfast was the eggs.

Q. Do you know how many eggs you used in a day? A. Yes.

Q. About how many?

A. Two cases, sometimes more.

Mr. Faulkner: Your Honor, this testimony is now clearly identified, and we make the same objection to this testimony that we made to Mr. Debes' testimony.

The Court: Overruled.

Mr. Faulkner: Exception. Upon all the grounds stated, your Honor.

The Court: Very well. [1408]

Mr. Pratt: Q. You say you used two cases a day.

A. Yes, that is, if the eggs was bad. If the eggs was bad sometimes we used four.

Q. You used four cases if they were bad?

A. That's right.

Q. On this particular voyage, Voyage 13?

A. Yes.

(Testimony of Thomas Andrew Dolyn.)

Q. That started along in December; do you remember anything about examining any eggs at the start of that voyage? A. Yes, I did.

Q. When did you first examine egs in connection with that Voyage 13?

A. I would say the second day we was under way; the second day when we left port.

Q. The first day that you left port you didn't use eggs?

A. Yes, we did, but I had a supply of eggs in the kitchen. Sometimes in port we always take about three or four cases and leave it in the kitchen for a couple of days or so, because everybody is off in port, so we have to supply the kitchen, I mean the galley, with the eggs to last us for two days or so.

Q. Those are what you call port stores?

A. That's right.

Q. You say it was about the second day?

A. That's right.

Q. When you observed anything about eggs?

A. Yes.

Q. What did you observe?

A. First when I opened the case of eggs one layer was on top. When I took the first layer of eggs the second was empty, there was nothing in it; the second layer was empty. [1409]

Q. No eggs in the second layer?

A. No, no eggs, at all. I called the chief steward about that. I don't know if he ever noticed or not.

Q. The chief steward was who?

(Testimony of Thomas Andrew Dolyn.)

A. Mr. Debes.

Q. Did he come then to the galley?

A. Yes; of course he come, he have to come in. I call him in.

Q. Besides the fact there were eggs missing from that first case of eggs on that day, what else did you observe about those eggs?

A. Well, bottom eggs in the same case, they would be green, they would have moss growing around the last layer.

Q. Did you open those eggs?

A. Yes, we got to open——

Q. Speak slowly, please. Just complete your answer.

A. When I started to open up the eggs, breaking them, there were four out of one dozen all bad; I mean as soon as we break the eggs they fall like water.

Q. How about the yolk?

A. There was no yolk, at all. When an egg is bad it is all mixed together, there is nothing to notice of a yolk.

Q. Did you observe any odor from those eggs?

A. Yes, you could smell them, see? Smell like sulpher, I would say.

Q. In this first case of eggs, how many layers of eggs did you find missing?

A. That case, in that case one layer.

Q. Just one layer missing?

A. Yes. We opened up another case because I

(Testimony of Florence Andrew Boivin.)

ordered two; I had another case which was the [1410] third layer was missing.

Q. The third layer was missing?

A. Yes.

Q. Were any other layers empty in that second case? A. No, that is all there was.

Q. How many eggs are there in a layer?

A. Three dozen.

Q. How many eggs in this first case that you examined, how many of them were bad so that you couldn't use them?

A. In the whole case?

Q. In the whole case.

A. One-third, more than a third of the eggs.

Q. More than 30?

A. More than a third.

Q. More than a third. The rest of the eggs in the case, did you use those?

A. Of course, I picked out the best ones.

Q. You picked out the best ones?

A. Yes.

Q. Were they all right?

A. Well, I can hardly describe the eggs. They are the best I could do.

Q. What did you do with these eggs in that first case, what use did you make of them?

A. I scrambled them.

Q. You scrambled them?

A. Yes, you couldn't fry them; I had to scramble them.

Q. You couldn't fry them? A. No.

(Testimony of Thomas Andrew Dolyn.)

Q. Why not?

A. Well, as soon as you put them out they get spotted with each other——

The Court: Just a minute, just a minute. If you sit [1411] back in your chair and be more comfortable——

The Witness: Yes, sir.

The Court: This reporter, here, when you answer a question he has to take it down in shorthand. If you talk slowly and raise your voice——

The Witness: I am sorry.

The Court: It is all right. I understand you are trying to do the best you can. Proceed.

Mr. Pratt: Q. You say you scrambled these eggs? A. Yes.

Q. You couldn't fry them?

A. No, I couldn't.

Q. Were the scrambled eggs all right to feed to the men, or whomever it was?

A. Well, they are the best we could give them, but you dope it up with mace or nutmeg.

Q. You had to dope them up with mace and nutmeg? A. That's right.

Q. Why?

A. Because they had a peculiar smell to them.

Q. The second case of eggs on that first day that you speak of—— A. Yes.

Q. What was the condition of those eggs?

A. That was also the same thing, only instead of the second layer of eggs was missing it was missing the third layer.

(Testimony of Thomas Andrew Dolyn.)

Q. What was the condition of the eggs that were in the case?

A. Same thing, mixed with the good ones—some of them good ones. It was mixed.

Q. What proportion of them could you use—how many of the [1412] eggs could you use?

A. Always I pick out, of every dozen I throw four eggs away, or sometimes half of the dozen.

Q&. Throw them away? A. Yes.

Q. Where did you throw them away?

A. Beg pardon?

Q. You threw them where?

A. In the garbage can.

Q. That was the first day that you speak of?

A. Yes.

Q. Did you have any more eggs brought to you that day?

A. Well, the first day, generally—I only had two cases. Sometimes we use them up.

Q. On the next day additional eggs were brought up?

A. Yes, every day; every day I use so many cases.

Q. Were you ever down in the chill room where the eggs were kept?

A. No. I was in the chill box several times, but I never go after the eggs.

Q. You sent someone for the eggs?

A. Yes.

Q. Were you in the chill box during the first few days out? A. Yes.

(Testimony of Thomas Andrew Dolyn.)

Q. Will you describe the chill box where these eggs were kept?

A. Well, the size of the box?

Q. Yes, the size of the chill box.

A. I am not very much at figuring; well, pretty good size chill box.

Q. What was the condition of the chill box? What was the condition of it? Was it clean, or dirty?

A. Yes, yes, it was clean. They force them to keep it clean.

Mr. Faulkner: What was the answer? [1413]

(The answer was read by the reporter.)

Mr. Pratt: Q. Do you know at what temperature the chili box was kept?

A. No, I couldn't answer that.

Q. From that time on during this 13th voyage of the Hawaiian Clipper, how frequently did you have eggs brought up? A. Every day.

Q. Do you know how many eggs you used during the course of that voyage?

A. Well, I could figure out; two cases every day. We generally take more, because they were so bad we have to throw half out.

Q. So it took more cases of eggs? A. Yes.

Q. Of the other eggs that followed, how many of them were you able to use, on the average?

A. That was the same story, either bad or more bad, or less bad, but generally that was about a third of the case always goes to the garbage can.

(Testimony of Thomas Andrew Dolyn.)

Q. A third went to the garbage can. How about missing eggs?

A. In the three days I was watching and after that my second cook got sick so I had to take his station, so I didn't pay much attention. I thought that was just—well, it was supposed to be like that, so I just gave it up.

Q. The eggs that you examined personally, did you find missing eggs in any other of the cases?

A. Well, I never opened up the eggs; another man did, and it seems to me they don't pay any attention to that.

Q. So what you are talking about now is just the first few [1413] days of the voyage?

A. That's right.

Q. Do you know whether the eggs that were on hand on the boat became exhausted, did you take on any more eggs during that voyage, do you know?

A. Yes. I took them up from the same storeroom.

Q. Now. Did eggs come on the boat?

A. No.

Q. That you know anything about?

A. No, I don't think so. We just load eggs in the port, the home port.

Q. You don't know of any other eggs coming on?

A. No.

Q. Do you know whether this ship stopped at Leyte? A. Yes, Leyte.

Q. In the Philippines?

A. Yes, I remember.

(Testimony of Thomas Andrew Dolyn.)

Q. Do you remember any stores coming on at Leyte? A. I don't know.

Q. You don't remember? A. No.

Q. Did you cook for the hospital on the boat?

A. Yes, I did.

Mr. Pratt: That is all.

Cross-Examination

Mr. Faulkner: Q. Mr. Dolyn, you have been a ship's cook quite a while?

A. Yes, quite a few years.

Q. You have described a particular voyage back in December of 1944, and the eggs. Do you remember that voyage? A. Yes.

Q. At the time you started that voyage you had just completed a voyage, had you not; you had been on the preceding voyage?

A. I was on another boat. [1415]

Q. Weren't you on the boat on Voyage 12?

A. Yes. Your mean before—oh, that's right.

Q. You cooked on that boat, did you?

A. Yes.

Q. The eggs were all right on Voyage 12?

A. I have one, or two, or three, maybe, in a whole case might be sometimes a dozen, but that was not so extreme like the last voyage.

Q. On this voyage in December, do you remember when the ship went to sea, do you remember when the Hawaiian Shipper went to sea on the last voyage, Voyage 13?

A. Yes, I got it here in my discharge.

(Testimony of Thomas Andrew Dolyn.)

Q. That is the way you can remember?

A. That's right.

Q. When did you go to sea?

A. I tell you I never keep track of those things.

Q. Do you remember at all?

A. I do remember that I went, but I mean to say I don't remember of the date and so on.

Q. Do you remember how long it was from the time you signed off voyage 12 until you went out the Golden Gate on Voyage 13?

A. I don't remember that.

Q. Was it more than a couple of weeks?

A. Perhaps it was.

Q. Did you lay out in the stream any length of time, Mr. Dolyn, before you went to sea?

A. I was too busy to notice those things.

Q. Well, you don't happen to remember?

A. No, I don't remember.

Q. You don't know when you left San Francisco. What was the [1416] first port you touched at? Did you go down to San Pedro?

A. I couldn't tell you that. I be honest with you. I can't remember when we left. I know we went to Philippines, that's all I know.

Mr. Pratt: Will you speak loudly, please?

A. I couldn't remember if we ever stopped at another port, or not.

Mr. Faulkner: Q. Did you stop at Honolulu?

A. I don't remember, to be honest with you.

Q. You don't remember any place you went at all on that trip?

(Testimony of Thomas Andrew Dolyn.)

A. Yes, I do remember Philippines, because we stopped there, but if we stopped for one hour or so I don't pay any attention, I was too busy.

Q. Well, it was in time of peace, the war was over—no, this was during the war, wasn't it?

A. Yes; that was the real war, yes.

Q. You have no recollection of stopping at Los Angeles or San Pedro?

A. We stopped here and there, but I couldn't tell you exactly what place we stopped.

Q. After you left the port of San Francisco where was the first place your vessel stopped?

A. I don't know.

Q. How long have you been a chief cook?

A. I been in it fifteen years. Forty-five years I am in the game.

Q. Forty-five? A. That's right.

Q. You have been at sea going on forty-five?

A. No, just fifteen years. [1417]

Q. Fifteen years at sea?

A. That's right.

Q. But you have been a cook for—

A. For forty-five years.

Q. You remember that sometime after you went out to sea, within a few days after you went out to sea, you had a case of eggs in your cooking galley, am I right? A. Yes.

Q. They had been brought up there by one of your assistants? A. That's right.

Q. All of the eggs that came into your galley were brought there by an assistant?

(Testimony of Thomas Andrew Dolyn.)

A. That's right.

Q. You usually ordered a couple of cases a day?

A. That's right, a couple of cases a day during the voyage.

Q. Would the number of cases depend upon the number of men you were feeding? The number of eggs that you were serving would depend upon the number of men you were feeding?

A. No, that was not exactly that; you see, I order two cases to last me for all my cooking, like making bearnaise sauce or Hollandaise or salads.

Q. Did you cook eggs for the men at breakfast?

A. Yes.

Q. Did you cook them every morning?

A. Yes.

Q. How many men were you cooking for?

A. I couldn't exactly tell you the number, but I guess over 200, but I don't know for sure.

Q. What would the average order of a man eating eggs on that boat be? A. What?

Q. How many eggs would a man order, ordinarily, on that boat? [1418]

A. Two eggs in the morning. If somebody wants three they can have three.

Q. They all had a pretty good appetite?

A. Sometimes.

Q. In addition to the eggs in the morning about how many dozen eggs would you require for your salad dressings and your salads and other types of cooking?

(Testimony of Thomas Andrew Dolyn.)

A. I was not working on a percentage bases, I didn't care whether one dozen or two dozen.

Mrs. Faulkner: What?

The Court: He wasn't working on a percentage basis and he didn't care whether he used one dozen or two dozen.

Mr. Faulkner: In other words, the eggs were expendable; is that right?

Q. When you got all through the voyage the eggs were not very good, at all; generally they were not good eggs?

A. Voyage 12 was always good.

Q. I am talking about 13.

A. Voyage 13 were extremely bad.

Q. You have had experience with eggs over a long time, haven't you? A. What?

Q. You have had experience with eggs over a long period of time?

A. Yes, I know the bad eggs from good ones.

Q. You knew the bad eggs from good ones on Voyage 13; isn't that right? A. Yes.

Q. You have seen a lot of both? A. Yes.

Q. Isn't that correct? A. What? [1419]

Q. You had seen a lot of good eggs in your time, as a cook and you had seen a lot of bad eggs?

A. Right.

Q. In connection with these particular eggs, do you know did I understand you that in this first case that down in the case the eggs had a musk or a mold on them? A. Yes.

(Testimony of Thomas Andrew Dolyn.)

Q. In other words, that would be a little fuzzy stuff?

A. Yes, the last layer. I didn't say that was on every one.

Q. No, but the lower part the eggs would have a fuzz on them? A. That's right.

Q. Were they good eggs? A. No.

Q. They were nearly all bad?

A. That's right.

Q. The eggs that didn't have that type of mold, those were the type of eggs out of which you completed your voyage?

A. Well, some of them be all right. I have to break them in a separate bowl to see if they are good or not. If they are bad I throw in the garbage can, wash the bowl, and bring another one.

Q. In other words, the eggs that did not have the mold on or the musk generally—rather, the eggs that did have the mold or musk on, they were generally bad?

A. We tried them, you know, there is nothing like trying, because some of the moss would fool you. We tried them out whether they were on or not.

Mr. Faulkner: May I have that read, your Honor?

The Court: Read the answer.

(Answer read by the reporter.) [1420]

Mr. Faulkner: Q. Well, did the moss fool you? Were any of the eggs good?

A. No, mostly all bad.

(Testimony of Thomas Andrew Dolyn.)

Q. Mostly all of those with the moss were bad?

A. Yes; might be one good but the rest bad.

Q. The eggs that you used after the first case or second case, did they have mossy eggs, too?

A. I didn't notice that.

Q. You didn't notice that?

A. No. That is what I noticed and I called the chief steward.

Q. In other words, there was one case of eggs only that you observed were musky and moldy?

A. Yes.

Q. And you called the chief steward?

A. Right.

Q. You handled perhaps a couple of hundred cases of eggs? A. Yes.

Q. Maybe 300 cases from then on?

A. Might be more.

Q. Maybe more. The only case of eggs that you observed musky or moldy was the first one?

A. But I didn't open all the cases.

Q. I know, but as far as you are personally concerned, this one case that you saw the musk and mold on. A. Yes.

Q. All of those eggs were bad?

A. Yes. That is all that could be noticed.

Q. How many cases of eggs did you use on Voyage 12?

A. I can't figure—I can't tell you exactly how many cases.

Q. How many cases of eggs did you use on Voyage 14?

(Testimony of Thomas Andrew Dolyn.)

A. I couldn't tell you that. We can figure out very easy. [1421] If I give myself two cases a day but the cases that eggs are bad and I have to use three, might be sometimes four.

Q. How long was Voyage 12?

A. 12 or 14?

Q. 12. A. Or 13.

Q. How long was voyage 12?

The Court: Do you remember how long the Voyage 12 was? A. No.

Mr. Faulkner: Q. How long was Voyage 13?

A. I couldn't tell you. I could tell——

Q. I want your memory.

A. Oh, no. I don't keep it——

Q. You don't remember?

A. No, I don't.

Q. Well, it was a long time?

A. Well, it was a long trip.

Q. It was an exceptionally long voyage?

A. That was a long one.

Q. Over three months? A. Might be.

Q. Did you have any eggs left when you finished the voyage?

A. I don't know. I don't keep track of eggs, that is out of my borders.

Q. Were you using eggs at the time of the completion of the voyage? A. Yes.

Q. So from the time the ship started until the time the voyage was completed, you were still using eggs? A. Yes.

Mr. Faulkner: That is all.

Mr. Pratt: That is all.

The Court: Are you through with this witness?

Mr. Pratt: All through [1422]

The Court: All right.

Mr. Pratt: At this time I offer in evidence Exhibit No. 12 for identification. This is a general agency contract between the United States War Shipping Administration and Alaska Packers Association. I also offer with it the certified copy of the letter of allocation to the Alaska Packers Association of the steamship John Muir.

Mr. Faulkner: This is similar to other offers in evidence, and at the time of the other offers we made certain objections. We repeat them now, your Honor.

The Court: Very well.

Mr. Faulkner: We renew them without repeating them.

The Court: Yes. The objection will be overruled.

Mr. Faulkner: Exception.

(U. S. Exhibit 12 for Identification was thereupon received in evidence.)

Mr. Pratt: I also offer Exhibit No. 5 for Identification, which is also a general agency contract with Alaska Packers Association, with letter of allocation for the steamship Francis W. Parker. I believe as far as the contract, itself, is concerned, it is another copy of the same contract as Exhibit No. 12, but the allocation of the Francis W. Parker is an addition. [1423]

Mr. Faulkner: Same objection, your Honor.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

(U. S. Exhibit 5 for Identification was thereupon received in evidence:) [1423-a]

HERBERT B. ADAMS

called on behalf of the Government; sworn.

The Court: Q. What is your full name, please?

A. Herbert B. Adams.

Q. What is your business or occupation.

A. Vice-President of J. J. Moore & Company.

Q. What is their business or occupation?

A. Operation of steamboats and exporting.

The Court: Proceed.

Direct Examination

Mr. Pratt: Q. And your name is what again? H. B. Adams? A. H. B. Adams.

Q Vice-President of J J. Moore & Company, Inc., is that right? A. That is right.

Q. I will ask you whether your company has had the operation of the steamships John Muir and Francis W. Parker?

A. That is correct.

Q. In that connection I will ask whether your company, J. J. Moore & Company, Inc., has acted as Sub-Agent for Alaska Packers Association?

A. That is correct.

Q. Have you also a general agency contract with the War Shipping Administration?

(Testimony of Herbert B. Adams.)

A. No sir.

Q. You act as sub-agent?

A. That is right.

Q. For how many different general agents?

A. Well, at the present time only for one, the Alaska Packers. [1424]

Q. That is the Alaska Packers Association?

A. That is right.

Q. I direct your attention, Mr. Adams, to the paper which is Exhibit 65 for Identification, which is an invoice of Nye and Nissen directed to United States of America, War Shipping Administration, Alaska Packers Association, General Agents, 451 Montgomery Street, City, for a quantity of supplies, including eggs, cheese, and butter, in the aggregate amount of $1,292.91. Do you recognize that paper?

A. Yes sir.

Q. Did it come from the files of your corporation? A. That is correct.

Q. Kept in the ordinary regular course of business of that company? A. Right.

Q. How did this paper come to your office?

A. I presume it came through the mail.

Q. I will ask whether this invoice was paid by your company?

Mr. Pratt: I ask to be marked for identification a cancelled check.

Mr. Faulkner: We have no objection, your Honor, to having these checks shown to the witness before the Clerk marks them, and then that speeds it up.

(Testimony of Herbert B. Adams.)

(The document was thereupon marked U. S. Exhibit 101 for Identification.)

Mr. Pratt: Q. I show you this check, which is now marked Exhibit 101 for Identification. Is that the check of your company?

A. Well, it is a check of the Alaska Packers, which [1425] we prepared.

Q. Was this check given in payment of the invoice which you just identified?

A. I did not look at the amount, but I presume it was.

Q. It is the same amount, $1,292.91, dated May 13, 1944, payable to Nye and Nissen, Inc., 1371 17th Street, San Francisco?

A. Yes, that would be the check.

Q. Your company is J. J. Moore & Company, Inc.? A. That is right.

Q. I notice this check is the check of the Alaska Packers Association, General Agents, Special Account? A. That is right.

Q. Will you state the routine or the procedure under which this check was made out?

A. Well, it was prepared by our office and then——

Q. Do you have these blank checks then?

A. Yes sir?

Q. Go ahead.

A. And then the check was sent to the Alaska Packers Association's office for signature.

Q. Now, the Alaska Packers Association have a San Francisco office, have they? A. Yes sir.

(Testimony of Herbert B. Adams.)

Q. In the same building that you are?

A. No, they are about two blocks away.

Q. And you say the check was drawn in your office? A. That is right.

Q. And then sent to the Alaska Packers for signature? A. Correct.

Q. And when the check is paid by the bank to whom is the check [1426] returned?

A. The cancelled check is returned to the Alaska Packers.

Q. And then what?

A. Then it is turned over to our office, kept with our records.

Q. That then becomes one of the permanent regular records of your office, is that right?

A. Yes.

Q. Do you know from what funds this check was paid? A. It is paid——

Mr. Faulkner: We object to that as calling for the opinion and conclusion of the witness, your Honor?

The Court: If he knows he may answer.

Mr. Faulkner: Exception.

A. It comes from the revolving fund established through the War Shipping Administration.

Q. It is Government funds then?

A. Correct.

Mr. Pratt: This check is offered in evidence, if the Court please.

The Court: It will be admitted and marked.

(Testimony of Herbert B. Adams.)

(U. S. Exhibit 101 for Identification was thereupon received in evidence.)

Mr. Faulkner: Same objection, your Honor.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

Mr. Pratt: Q. Now, that check and this invoice which is paid relates to supplies furnished to the Steamship John Muir, [1427] does it not?

A. Correct.

Mr. Pratt: I offer for identification, if the Court please, an invoice of Nye and Nissen dated May 9, 1944, to United States of America, War Shipping Administration, Alaska Packers Association, San Francisco, for various food products, including 45 cases of eggs, butter and cheese, in the sum of $996.87.

(The document was thereupon marked U. S. Exhibit 102 for Identification.)

Mr. Pratt: I also offer for identification a duplicate or carbon copy of the foregoing exhibit.

(The document, a carbon copy or duplicate of Exhibit 102, was marked U. S. Exhibit 103 for Identification.)

Mr. Pratt: I also offer for identification a delivery receipt, a form of delivery receipt, dated May 9, 1944, on the letterhead or form of Nye and Nissen, to U. S. A., W. S. A., Alaska Packers, in connection with the steamship Francis W. Parker.

(The document was thereupon marked U S. Exhibit 104 for Identification.)

(Testimony of Herbert B. Adams.)

Mr. Pratt: Also the letter of Nye and Nissen to Alaska Packers Association dated May 9, 1944.

(The document was thereupon marked U. S. Exhibit 105 for Identification.)

Mr. Pratt: Also the cancelled check of the Alaska Packers Association dated May 20, 1944, payable to Nye and Nissen in the sum of $996.87. [1428]

(The document was thereupon marked U. S. Exhibit 106 for Identification.)

Mr. Pratt: Q. I first direct your attention to the invoice Exhibit 102 for Identification, and ask if that invoice passed through your hands?

A. Yes, sir.

Q. And became part of the regular record of your company in connection with your operation on behalf of the War Shipping Administration?

A. Yes, sir.

Q. And this relates to supplies furnished——

The Court: It may be well to ask the witness what it is.

Mr. Pratt: Q. To what ship does that relate, delivery of goods to what ship?

A. The Francis W. Parker.

The Court: Q. Briefly outline what it indicates?

A. It is for 13 boxes of butter, 6 bundles of American cheese, 5 boxes of American Jack cheese, 45 cases of eggs.

Mr. Pratt: Q. Now, Exhibit No. 103 for Iden-

(Testimony of Herbert B. Adams.)

tification is a dublicate or carbon copy of the first, is it not?

A. Yes sir.

Q. How did these papers come to you?

A. I presume through the mail.

Q. Through the mail? A. Yes.

Q. I call your attention to this letter of Nye and Nissen to Alaska Packers Association, dated May 9, 1944. Did that letter come to you in connection with this transaction? A. Yes sir.

The Court: What is that letter?

A. It is a letter with our company's stamp on, which shows the receipt of the letter.

Mr. Pratt: Q. When was the letter received?

A. May 10, 1944.

Q. I now direct your attention to this Exhibit for Indentification No. 104. Did that paper come to your files and to your attention?

A. Well, I don't know particulary to my attention, this particuar piece of paper, but it came to the office.

Q. Is that part of the regular records of your company kept in the ordinary course of business?

A. That is correct.

Q. I direct your attention to Exhibit No 106, for Identification, this cancelled check, and I will ask you if that was issued by your office?

A. Yes.

Q. In payment of this Exhibit No. 102?

A. Yes sir.

Q. I notice that on this Exhibit 102 there is

(Testimony of Herbert B. Adams.)

a paid stamp. Was that stamp on there with this signature—did it come to you after the bill was paid? A. That is correct.

Q. And then became part of the files of your office? A. Yes sir.

Q. Was this check of Alaska Packers Association drawn in the same way that the one relating to supplies furnished to the John Muir was?

A. Exactly.

Q. And then this one was in relation to the payment of the invoice for the Francis W. Parker?

A. Right.

Q. And was paid in the same manner from the same funds, is that right? A. Yes sir. [1430]

Mr. Pratt: Now we offer in evidence Exhibit No. 102.

The Court: It may be admitted and marked.

(U. S. Exhibit 102 for Identification was thereupon received in evidence.)

Mr. Pratt: That is the receipted invoice of Nye and Nissen for this shipment.

Mr. Faulkner: If you offer them all at one time then I will make one objection. We will cover it that way.

Mr. Pratt: Very well. I will also offer U. S. Exhibit No. 104 for Identification, which is the delivery slip of Nye and Nissen for these products to the Francis W. Parker; also the letter, 105, directing the manner in which the check is to be sent; and I also offer the cancelled check, which is U. S. Exhibit No. 106.

(Testimony of Herbert B. Adams.)

Mr. Faulkner: You offer them against what defendants?

Mr. Pratt: I offer these in connection, first, with the fourth count of the indictment, which specifically describes the shipment or describes the alleged false claim made by the defendants in connection with the delivery of food products to the steamship Francis W. Parker.

I also offer these exhibits as to the first count of the indictment, namley, the conspiracy count, as being overt acts in furtherance of the conspiracy.

Mr. Faulkner: And against all defendants?

Mr. Pratt: And against all defendants. [1431]

Mr. Faulkner: We object to them, your Honor, as incompetent, irrevelant and immaterial, no foundation laid in that there is no conspiracy shown at this stage of the record after four weeks of trial. No foundation whatsoever.

The Court: The objection will be overruled. Let them be admitted and marked.

Mr. Faulkner: There is no proof of any overt act by the introduction of these documents by any defendant. They are unconnected with a defendant except the corporation.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

(The documents were thereupon received in evidence and marked respectively U. S. Exhibits 104, 105 and 106 in evidence.)

Mr. Pratt: That is all.

(Testimony of Herbert B. Adams.)

Cross Examination

Mr. Faulkner: Q. Mr. Adams, I did not get your title with J. J. Moore & Company?

A. Vice-President.

Q. Have you anything to do with ordering merchandise of the Alaska Packers ships?

A. Not indirectly.

Q. Pardon me? A. Not indirectly.

Q. Not indirectly?

A. Not directly, I should say.

Q. Are you familiar with the vessel, the Francis W. Parker? A. Yes sir.

Q. Is there a purchase order?

Mr. Pratt: Yes. Do you want it? [1432]

Mr. Faulkner: If I may have it.

Q. Does your company issue the purchase orders for the Alaska Packers?

A. Yes, we prepare them and they are sent to the Alaska Packers for their signature.

Q. Would you recognize this as a duplicate of a record of your company? A. Yes sir.

Mr. Faulkner: The paper I have just referred to——

Mr. Pratt: This paper will be used with another witness, so I ask that it be marked a Government's exhibit for identification.

Mr. Faulkner: That is all right.

The Court: Let it be admitted and marked.

(The document was thereupon marked U. S. Exhibit 107 for Identification.)

(Testimony of Herbert B. Adams.)

Mr. Faulkner: I can shorten this examination if I have the assurance of Mr. Pratt that he is going to produce the purchasing agent of the Alaska Packers.

Mr. Pratt: No, J. J. Moore & Company.

Mr. Faulkner: I mean of the company——

Mr. Pratt: Yes. He is the next witness.

Mr. Faulkner: Q. These documents are merely papers that you have extracted from your file because someone requested you to, aren't they?

A. That is correct.

Q. You do not know any of these transactions of your own knowledge, do you?

A. In a general way I do. [1433]

Q. Are you familiar with the transactions where your company requested the firm of Nye and Nissen to recondition the eggs on the Francis W. Parker that you had received from another source?

A. No.

Q. You do not know about that transaction. Who would handle that in your company?

A. I presume Mr. Schneider would be the man who would handle that.

Q. Is that the man who is to follow you on the witness stand? A. That is right.

Q. So the quality of this merchandise or anything about it you know nothing?

A. That is correct, as far as I know.

Q. Is your company the agent for the Alaska Packers on an oral agreement of agency?

A. No, we have a written agreement.

(Testimony of Herbert B. Adams.)

Q. Have you got that agreement, Mr. Adams?

A. Yes, sir. I have a photostat as well as the original. If this will do, I will keep the original.

Q. This paper that you have just handed me is a photostat, according to your own knowledge?

A. That is right. Well, I have the other one with me if you want to see it.

Q. This arrangement existed between your company and the Alaska Packers in the year 1944 and it was under this agreement that you acted?

A. I think it was in 1942, wasn't it?

Q. It is dated in 1942.

A. That is right.

Q. And it continued up to and beyond the month of May, 1944? A. Correct. [1434]

Mr. Faulkner: You have no objection to the fact that he has presented a photostat?

Mr. Pratt: Not the slightest.

Mr. Faulkner: May this be marked Defendants' Exhibit for Identification next in order, your Honor?

The Court: Let it be admitted and marked.

(The document was thereupon marked Defendants' Exhibit Z for Identification.)

Mr. Faulkner: Q. Mr. Adams, there were two checks here that you testified concerning—and I do not know whether I have this correct. The check is on the bank account of the Alaska Packers Association but it is a check which becomes part of the J. J. Moore & Company file?

(Testimony of Herbert B. Adams.)

A. That is correct.

Q. Although the funds are in their name, do you draw on them?

A. No, that is drawn by the Alaska Packers. They are custodians of this special fund.

Q. When your company makes an order for commodities like butter, eggs and cheese, and the invoice comes to your company——

A. That is right.

Q. Then you make a claim upon them to pay these bills which you have contracted, is that correct?

A. Well, in a way. We send the invoice with the check unsigned to the Alaska Packers, and then they return them to us and we mail them out.

Q. And you send large groups at a time, I suppose?

A. Yes, that is usualy the case. [1435]

Q. Now, I think when you said some of these were mailed to you, you do not know how you got Exhibit 104, do you?

A. No; but I can express an opinion how we got it. This Kammerle out here was the steward, and he propably gave us the copy, delivered it to the office either through the captain or directly.

Q. It is also obvious, is it not, Mr. Adams, that this Exhibit No. 102 was received by you from —what is his name? Kammerle?

A. No, Kammerle wouldn't have anything to do with this.

Q. Did he sign them?

(Testimony of Herbert B. Adams.)

A. We all have to sign them. We take the copies——

Q. Excuse me. Didn't he sign that on the dock?

A. No. Well, I will tell you. He signed this before the ship sailed. We get the department heads of the various departments on the ships to sign these invoices along with the master, as a rule.

Mr. Faulkner: I think that is all, Mr. Adams.

The Court: Is that all from this witness?

Mr. Pratt: That is all.

The Court: You may be excused. The jurors may be excused until two o'clock.

(A recess was thereupon taken until 2:00 p. m.) [1436]

Afternoon Session, February 8, 1946, 2:00 p. m.

The Court: Waive the roll call, stipulated and agreeing all the jurors are present and seated in the box.

A. D. SNAIDER,

called as a witness for the Government; sworn.

Direct Examination

Mr. Pratt: Q. Will you state your name?

A. Abraham David Snaider.

Q. You spell your name S-n-a-i-d-e-r, do you not? A. Correct.

Q. Your home is here in San Francisco?

A. Yes, sir.

(Testimony of A. D. Snaider.)

Q. I think you are a native of California, are you not? A. Correct.

Q. What is your occupation?

A. I am a purchasing agent.

Q. Of what company?

A. J. J. Moore Company, Incorporated.

Q. In connection with your duties as purchasing agent for J. J. Moore & Company, Incorporated, have you had to do with the purchase of food stores for delivery for the Alaska Packers Association to vessels on the waterfront?

A. I have.

Q. Does that include the steamships John Muir and Francis W. Parker? A. It does.

Q. I show you a paper which is marked Exhibit 64 for Identification, a purchase order, dated April 10, 1944, on Alaska Packers [1438] Association as general agents for the Government, War Shipping Administration, directed to Nye & Nissen, San Francisco, and I will ask you if you can identify that.

The Court: You may answer.

A. Yes, I can. It is a copy of a purchase order that was issued through our office.

Mr. Pratt: Q. Issued through your office?

A. Yes.

Q. Under your immediate supervision?

A. Yes, sir.

Q. This was for the delivery of the products described in it to the steamship John Muir, am I right? A. That is correct.

(Testimony of A. D. Snaider.)

Mr. Pratt: This is now offered in evidence, if the Court please.

The Court: It will be admitted and marked.

Mr. Faulkner: The same objection, your Honor, to the introduction of similar documents.

The Court: Same ruling.

Mr. Faulkner: Exception to the ruling.

(U. S. Exhibit 64 for Identification was thereupon admitted in evidence.)

Mr. Pratt: Q. I observe, Mr. Snaider, that this purchase order is dated April 10, 1944, and it states, "Delivery end of April, 1944, Steamship John Muir, Voyage 3, The Steward's Department, Deliver to Will Advise."

Mr. Faukner: Deliver to whom, Mr. Pratt?

Mr. Pratt: "Will Advise." [1438]

Q. What is the interpretation of that particular language in the purchase order?

A. "Deliver to Will Advise."

Q. Yes.

A. Well, at the time that these orders were placed, we know approximately when we will want them but we don't know exactly where in the bay area that will require delivery, so we place our orders as soon as we can make up our minds as to the quantities we want, and then we send the order in to the supplier on a "Will Advise" basis, so that when we know definitely when and where we are going to want the stores we will notify them to make delivery.

(Testimony of A. D. Snaider.)

Q. How did the order or advice go to Nye & Nissen as to when and where to make delivery?

A. I don't know exactly, but our normal way to do it is either by telephone or by circular letter.

Mr. Pratt: Where is the John Muir document?

Mr. Faulkner: I think the John Muir is one of the early ones.

Mr. Pratt: No. It was identified by Mr. Adams this morning.

Mr. Faulkner: I don't think so. I think that was the Parker and you had the other in an earlier folder. I think Mr. Adams identified——

Mr. Pratt: Yes, he spoke about both.

Mr. Faulkner: But you showed him an invoice out of the other folder.

Mr. Pratt: Where is Exhibit 65? [1439]

The Clerk: He has it on the stand.

Mr. Faulkner: I think it is in there, Mr. Pratt.

Mr. Pratt: Yes, here it is.

Q. I show you Exhibit No. 65 for Identification and I will ask if you recognize that invoice.

A. Yes, I do.

Q. Does that cover the products that were ordered by means of this purchase order you just identified? A. Yes, it does.

Q. Can you tell from that instrument, Exhibit 65, when the supplies were delivered to the John Muir?

A. I think it would be, say, April 24th, 1944.

Q. This invoice is dated the 25th of April. What was the custom that obtained at the time in con-

(Testimony of A. D. Snaider.)

nection with the sending to your company of the invoice to the date of delivery of the products? Did the invoice come at the same time the goods did?

A. Not necessarily. Our usual practice and our usual instructions to our suppliers was to deliver the goods when and where instructed, but to mail or otherwise deliver the invoice to our office.

Q. They would come simultaneously wouldn't they?

A. The could, although sometimes the supplies would be delivered one day and they might mail the invoice in either the same day or the following day.

Q. It would be the same practically?

A. Practicaly, yes.

Mr. Pratt: If the Court please, I offer in evidence this Exhibit 64 for Identification, the purchase order, and [1440] Exhibit 65 for Identification, the invoice.

The Court: Purchase order for what?

Mr. Pratt: A purchase order issued by the Alaska Packers Association as general agents for the Government.

The Court: Is it butter, or cheese?

Mr. Pratt: For cheese, eggs, and butter.

The Court: One case of eggs?

Mr. Pratt: It is for 35 cases of Grade A—it is hard to read.

The Witness: 35 cases of Grade A eggs and 13 cases of processed eggs.

(Testimony of A. D. Snaider.)

Mr. Pratt: Q. 1050 dozen of the first and 450 dozen of the second? A. Yes.

Mr. Pratt: I am offering these with respect to the first count of the indictment.

Mr. Faulkner: Same objection to those, your Honor, that was fully discussed with the court several days ago when the issue was presented to your Honor as to the admissibility of these transactions that were not transactions in the indictment.

The Court: What were the dates?

Mr. Faulkner: This is April 10, is it not?

Mr. Pratt: The date of the purchase order is April 10, 1944, "Will advise," and the date of the invoice is April 25—no, April 24, 1944.

The Court: Let it be admitted and marked. Objection overruled. [1441]

Mr. Faukner: Exception.

The Court: Note an exception.

The Clerk: 64 and 65 in evidence.

(U. S. Exhibits 64 and 65 for identification were admitted in evidence.)

Mr. Pratt: Q. In reference to this delivery of eggs to the Cape Muir on or about April 24th, do you know when the voyage for which those eggs were delivered began?

A. That was Voyage 3, which commenced 12:01 a. m. on April 22nd, 1944.

Q. April 22nd. Previous to the beginning of that voyage, you say it was April 22nd?

A. Yes.

(Testimony of A. D. Snaider.)

Mr. Faulkner: May I see what the witness is looking at, your Honor?

The Court: You may.

Mr. Faulkner: If he is refreshing himself.

The Court: He wants to know what you are looking at.

The Witness: That is just an informal record I keep of the arrival and departures of our vessels.

Mr. Faulkner: Q. Is the ship indicated there?

A. Not on this sheet. It is on this folder, it is right on the edge.

Mr. Pratt: Q. Are you refreshing your recollection from that document made by yourself at the time?

A. That is correct.

Q. You say the voyage started when?

A. April 22, 1944. [1442]

Q. These eggs apparently went on board on April 24th. That would be after the voyage started?

A. Yes.

Q. Where did the voyage start from?

A. It was in San Francisco Bay, here. At the exact time the ship was in drydock.

Q. The ship was in drydock on the 22nd?

A. Yes.

Q. The stores were loaded on April 24th?

A. That is correct.

Q. Where did the ship then go?

A. It went to Port Hueneme.

Q. That is north of here, is it, or south?

A. South of here.

(Testimony of A. D. Snaider.)

Q. Then from that point where did the boat go? A. It sailed foreign.

Q. For foreign ports?

A. May 4, 1944 from Port Hueneme.

Q. Between the date of April 24th, when these products were loaded aboard and May 4th, when the ship left Port Hueneme for foreign ports were any eggs, any further eggs loaded on that boat?

A. No, sir.

Q. I now direct your attention to a paper marked Exhibit 107 for Identification—no, I withdraw that.

In connection with this purchase order, No. 64 in evidence, I direct your attention to the statement in typewriting, "Attention Mr. Berman." Do you recall having any conversation with Mr. Berman in regard to this purchase order?

A. You mean at the time the purchase order was issued? [1443]

Q. Yes. A. No, I don't.

Q. Did you have any conversation with Mr. Berman about that time?

A. No, I did not. Looking at this, we quite frequently will make up a purchase order on a company, to the attention of some person who has handled our business.

Q. Were your contracts in connection with purchases from Nye & Nissen with Mr. Berman?

A. Yes, it was.

Q. Do you know Mr. Berman?

(Testimony of A. D. Snaider.)

A. I don't know that I know him if I saw him, if I saw him now, because it has been several years.

Q. Your conversations were over the telephone, I imagine, were they not?

A. Most of the times, yes. [1444]

Q. I now direct your attention to this Exhibit 107 for Identification, a purchase order, United States of America, War Shipping Administration, Alaska Packers Association, General Agent, Purchase Order No. 2906, dated March 20, 1944, directed to Nye and Nissen, and I will ask you if you can identify this paper? A. Yes, I can.

Q. Was that purchase order issued by you?

A. Yes, it was.

Q. It states above, "Attention Mr. Berman, confirming phone." Do you recall talking to Mr. Berman about that particular purchase of products?

A. I can't remember it personally and specifically, but from the notation on the purchase order I would say that I place it by telephone and then confirmed it by this written purchase order.

Q. Your conversation was with Mr. Berman, wasn't it?

Mr. Faulkner: He did not say that, Mr. Pratt. You tried to get him to say that, but he does not say that.

Mr. Pratt: I am not trying to get him to say anything.

Mr. Faulkner: He did not say he had any conversation with Mr. Berman at any time at all about any purchase order.

(Testimony of A. D. Snaider.)

Mr. Pratt: Q. Is it true that you had that conversation?

A. From that I would say that I did have it.

The Court: Q. What was that?

A. That I did have the conversation with Mr. Berman.

Mr. Pratt: I offer this exhibit in evidence, 107 for Identification, the purchase order for delivery to the Francis [1445] W. Parker, with the same expression: while it is dated March 20, it says below, "Will advise when to be delivered."

Mr. Faulkner: Same objection, your Honor, made to the introduction of similar documents at the outset of the presentation of this type of testimony.

The Court: The objection will be overruled. Let it be admitted and marked.

Mr. Faulkner: Exception.

(U. S. Exhibit 107 for Identification was thereupon received in evidence.)

Mr. Pratt: Q. I now hand you a paper and ask you if you can identify that? A. Yes, I can.

Q. What is that?

A. It is a copy of a delivery receipt in connection with the Nye and Nissen delivery to the steamer Francis W. Parker.

Q. And the date?

A. It is dated 5/9—that is May 9, 1944.

Q. Can you state when the delivery of these products was made to the Francis W. Parker?

(Testimony of A. D. Snaider.)

A. From the delivery receipt I would say it was the date of the receipt.

Q. On May 9? A. Yes sir.

Mr. Pratt: I offer the delivery slip in evidence. It is already in evidence, Exhibit No. 104.

Q. I note that this delivery receipt is signed by A. E. Kemmerle. Do you know Mr. Kemmerle?

A. Yes, I do.

Q. What connection did he have with your company, in any way? [1446]

A. He was the steward on the steamer Francis W. Parker.

Q. Do you have any recollection of advising the Nye and Nissen Company when to make delivery to the Francis W. Parker?

A. Let me see that purchase order. Could you repeat the question?

The Court: Read the question.

(Question read.)

A. I don't specifically remember giving instructions, no.

Mr. Pratt: Q. Around about this time of May 9, 1944, I will ask whether you recall any conversation with Mr. Berman?

A. Do you mean in respect to giving delivery instructions?

Q. In connection with the purchase of food products for your company or for the War Shipping Administration.

A. Not specifically.

(Testimony of A. D. Snaider.)

Q. You do not remember any specific conversation?

A. No. I talked to him in connection with the orders off and on, but as to any specific conversation——

Q. Did you ever have any conversation with him about this time, that is to say, about the fore part of May, 1944, in regard to the character of products which he was asked to supply to various vessels?

A. I don't remember, no.

Mr. Pratt: You may cross-examine.

Cross Examination

Mr. Faulkner: Q. Mr. Snaider, taking the vessel John Muir first, these papers that you have identified came out of the [1447] file of your company, did they not, referring to Exhibit 65—you will notice the 65 there and 64—those are records of your company? A. Yes.

Q. Are they are entire records of your company in relation to the shipment of this merchandise to the John Muir from Nye and Nissen?

A. To my knowledge they are, yes.

Q. Did you have a Department of Agriculture inspection certificate as part of your file?

A. The eggs were inspected and we undoubtedly did have the ticket.

Q. Do you know what you did with it?

A. Is that the John Muir?

Q. The John Muir.

A. I don't appear to have it here. It may have been given to the——